

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-41649
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 12, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES DOUGLAS NICHOLS,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:09-CR-222-2

Before JONES, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

James Douglas Nichols, federal prisoner # 16570-078, moves for leave to proceed in forma pauperis (IFP) on appeal from the denial of his motion for a correction of a clerical error under Federal Rule of Criminal Procedure 36. The district court denied his IFP motion and certified that his appeal was not taken in good faith. By moving for IFP status, he is challenging the district court's certification decision. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

According to Nichols, the district court failed to attach a copy of the ruling on his objections to the copy of the presentence report (PSR) used by the Bureau of Prisons in violation of Federal Rule of Criminal Procedure 32(i)(3)(C). The record before the court shows that the statement of reasons, reflecting the change in the base offense level and the reason for it, is attached to the PSR. Nichols has presented nothing to show any error in the documents related to his conviction. Accordingly, the district court did not err by denying the Rule 36 motion. *See* FED. R. CRIM. P. 36; *United States v. Mackay*, 757 F.3d 195, 200 (5th Cir. 2014); *United States v. Buendia-Rangel*, 553 F.3d 378, 379 (5th Cir. 2008).

The instant appeal does not involve "legal points arguable on their merits (and therefore not frivolous)." *Howard*, 707 F.2d at 220. The motion for leave to proceed IFP is DENIED. The motion for sanctions is also DENIED. Nichols's appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at n.24; 5TH CIR. R. 42.2